

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SANG W MENDY,

Plaintiff,

v.

RASIER LLC, UBER TECHNOLOGIES
INC, LYFT INC, ALLIANT INSURANCE
SERVICES INC, ALLSTATE
INSURANCE COMPANY,

Defendants.

CASE NO. 2:23-cv-01470-BAT

**ORDER DENYING PLAINTIFF'S
MOTIONS (DKT. 46 AND 47),
DISMISSING UNSERVED
DEFENDANTS WITHOUT
PREJUDICE, AND DIRECTING
PARTIES TO SUBMIT UPDATED
STATUS REPORT**

Before the Court are two motions filed by Plaintiff regarding original service of process on Defendants Lyft Inc. and Alliant Insurance Services, Inc. Dkt. 46 and 47. For the reasons explained herein, the motions are **denied** and Defendants Lyft Inc. and Alliant Insurance Services, Inc. are **dismissed without prejudice**. Plaintiff and the remaining defendants are directed to submit an amended Joint Status Report to the Court by **May 31, 2024**.

BACKGROUND

On September 20, 2023, this case was removed from King County Superior Court. Dkt. 1. Plaintiff sued Uber Technologies Inc. ("Uber"), Raiser LLC ("Raiser") and Lyft Inc. ("Lyft") for personal injuries Plaintiff allegedly suffered in an automobile accident on September 1, 2019. Dkt. 1-2 (Complaint). At the time of the accident, Plaintiff was a driver for both Uber and Lyft. Dkt. 1-2, pp. 5-6. Plaintiff never served Lyft with original process and Lyft has never appeared.

ORDER DENYING PLAINTIFF'S MOTIONS (DKT. 46 AND 47), DISMISSING UNSERVED DEFENDANTS WITHOUT PREJUDICE, AND DIRECTING PARTIES TO SUBMIT UPDATED STATUS REPORT - 1

1 On September 27, 2023, Rasier and Uber moved for a more definite statement. Dkt. 8.
2 Plaintiff moved to remand or leave to amend. Dkt. 10. On November 3, 2023, the Court granted
3 the motion for more definite statement and motion to amend. Dkt. 13. The Court noted Plaintiff
4 had failed to comply with Rule 8 as it was unclear exactly what Plaintiff was alleging or how any
5 of the facts in the complaint entitled him to relief. Dkt. 13, p. 4. The Court advised Plaintiff to
6 specify what each defendant allegedly did or did not do, why these acts or omissions were
7 unlawful, and why this entitled him to relief. *Id.*

8 On November 9, 2023, Plaintiff filed an Amended Complaint against Lyft, Rasier, and
9 Uber. Dkt. 14. Plaintiff never effected service of process of the Amended Complaint on Lyft. On
10 November 17, 2023, the parties filed a Joint Status Report consenting to the use of a Magistrate
11 Judge. Dkt. 15. Uber noted that it and Plaintiff are named insureds under an insurance policy and
12 as Plaintiff's claims are for underinsured motorist benefits under that policy, Uber is not a proper
13 party. Dkt. 15, pp. 1-2. On November 21, 2023, Rasier and Uber filed a motion to dismiss. Dkt.
14 16. On December 11, 2023, Plaintiff filed a second motion for leave to amend and add Allstate
15 Life Insurance as a defendant. Dkt. 21.

16 On December 27, 2023, this case was reassigned to the undersigned Magistrate Judge
17 consistent with the parties' consent. Dkt. 24. On December 28, 2023, the Court granted Plaintiff
18 leave to file a Second Amended Complaint containing all parties, facts, claims, and causes of
19 action. Dkt. 25. Plaintiff filed two proposed amended complaints. Dkts. 27 and 28. Uber moved
20 to strike both for failure to abide with the Court's Order or alternatively, for a more definite
21 statement. Dkt. 31. The Court granted the motion for more definite statement, advised Plaintiff
22 that he must file a complaint consistent with Fed. R. Civ. P. 8(a), and directed Plaintiff to include
23 facts describing what the defendants did and how this caused him harm. Dkt. 33, pp. 2-3.

ORDER DENYING PLAINTIFF'S MOTIONS (DKT. 46 AND
47), DISMISSING UNSERVED DEFENDANTS WITHOUT
PREJUDICE, AND DIRECTING PARTIES TO SUBMIT
UPDATED STATUS REPORT - 2

1 On February 3, 2024, Plaintiff filed a Second Amended Complaint naming Rasier, Uber,
2 Lyft, Allstate, Alliant Insurance Services (“Alliant”) and Mobilitas Insurance Company
3 (“Mobilitas”) as defendants. Dkt. 34. Plaintiff asserted claims under “RCW 19.86.093 and
4 alleges Uber and other Defendants engaged in impermissible business practices, discriminated
5 against Plaintiff, improperly denied Plaintiff certain employment benefits, and breached
6 contracts and unlawfully terminated Plaintiff’s employment.” Dkt. 34 at 5. Plaintiff further
7 alleged Uber and other Defendants improperly denied uninsured and underinsured insurance
8 claims and violated Washington’s unfair competition laws. *Id.* at 6.

9 On April 15, 2024, Plaintiff filed an Affidavit of Mailing of Summons and Second
10 Amended Complaint to “ALL PARTIES.” Dkt. 42. Plaintiff states he served the Summons and
11 Second Amended Complaint via CM/ECF, email, and first-class mail through counsel for
12 Defendants Rasier, Uber, and Allstate. *Id.* Plaintiff did not perfect original service on Defendants
13 Lyft or Alliance. The Court reminded Plaintiff that, pursuant to Fed. R. Civ. P. 4(m), he is
14 required to serve the Summons and Second Amended Complaint on these defendants within 90
15 days of filing the Second Amended Complaint. Dkt. 43. The Court advised Plaintiff that his
16 failure to serve these defendants within 90 days would result in dismissal of the action without
17 prejudice of the unserved defendants. The Court additionally advised Plaintiff that service of
18 process on a corporation requires Plaintiff to deliver a copy of the summons and complaint “to an
19 officer, a managing or general agent, or any other agent authorized by appointment or by law to
20 receive service of process.” Fed. R. Civ. P. 4(h)(1)(B). Dkt. 43, pp. 1-2.

21 On May 10, 2024, Defendant Mobilitas entered a notice of appearance. Dkt. 45.
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1 To date, Defendants Lyft and Alliant have not been served with original process. On May
2 13, 2024, Plaintiff asked the Court to allow original service through CM/ECF, the Court's
3 electronic filing system and/or by "posting" a notice in the Clerk's office. Dkts. 46 and 47.

4 DISCUSSION

5 Plaintiff is requesting that he be relieved of his obligations of serving Defendants Lyft
6 and Alliant and that the Court deem he has perfected service under Fed. R. Civ. P. 5 by the filing
7 of the Second Amended Complaint through CM/ECF. Rule 5 involves the filing of pleadings
8 *after* service is perfected and is not designed to provide adequate notice of a lawsuit to an
9 unserved defendant. Similarly, Plaintiff's request to provide notice by "posting" the lawsuit in
10 the Clerk's office does not comport with constitutional notions of due process. Any method of
11 service must be "reasonably calculated, under all the circumstances, to apprise interested parties
12 of the pendency of the action and afford them an opportunity to present their objections." *Rio*
13 *Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014-15 (9th Cir. 2002) (quoting *Mullane v.*
14 *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). For these reasons, Plaintiff's
15 request to effect service of process on Lyft and Alliant through means other than those allowed
16 under the federal rules is **denied**. The Court also finds dismissal of Lyft and Alliant from this
17 action is appropriate due to Plaintiff's failure to effect service of process.

18 Plaintiff filed his Second Amended Complaint on February 3, 2024. Dkt. 34. Plaintiff has
19 been given more than ample opportunity and direction to complete service of process on
20 Defendants Lyft and Alliant. In fact, Plaintiff named Defendant Lyft in his original complaint
21 filed on August 21, 2023, but never completed service of process on Lyft. As recently as last
22 month, the Court explained to Plaintiff that it is his responsibility to serve the summons and
23 Third Amended Complaint within the time allowed under Rule 4(m). The Court also explained

1 to Plaintiff that service of a corporation must be accomplished by delivering a copy of the
2 summons and complaint to an officer, managing or general agent, or other agent authorized by
3 law to receive service of process, and that Plaintiff's failure to properly serve the remaining
4 defendants in a timely and proper manner would result in dismissal by the Court. Dkt. 43, pp. 1-2
5 (citing Fed. R. Civ. P. 4(h)(1)(B)).

6 Here, there is no evidence Defendants Lyft or Alliant received actual notice of the lawsuit
7 or that serving them by Plaintiff's proposed unauthorized methods of service will satisfy due
8 process concerns. Proper service of process is required and is essential as "service of process is
9 the means by which a court asserts its jurisdiction over the person." *SEC v. Ross*, 504 F.3d 1130,
10 1138 (9th Cir.2007). "[I]n the absence of proper service of process, the district court has no
11 power to render any judgment against the defendant's person or property unless the defendant
12 has consented to jurisdiction or waived the lack of process." *Id.* at 1138–39. Thus, this Court
13 lacks jurisdiction over Lyft and Alliant in this action.

14 Dismissal of Lyft and Alliant is appropriate based on Plaintiff's failure to properly serve
15 them in a timely manner or show good cause for this failure. *See* Fed. R. Civ. P. 4(m) (90-day
16 time limit for service unless the plaintiff shows good cause); *In re Sheehan*, 253 F.3d 507, 512
17 (9th Cir. 2001) (setting forth factors for dismissal under Rule 4(m)).

18 Dismissal of Defendant Alliant is also appropriate on the grounds Plaintiff has failed to
19 state a claim against Alliant pursuant to Fed. R. Civ. P. 12(b)(6). A complaint must be dismissed
20 under Fed. R. Civ. P. 12(b)(6), if when accepting all allegations as true, fails to state a claim
21 which is plausible on its face, upon which relief can be granted. *Ashcroft v. Iqbal*, 556 U.S. 662,
22 678 (2009); *Lacey v. Maricopa County*, 693 F.3d 896, 907 (9th Cir. 2012). Dismissal is
23 appropriate "as a matter of law for a '(1) lack of a cognizable legal theory or (2) insufficient facts

1 under a cognizable legal claim.” *Smilecare Dental Group v. Delta Dental Plan of Cal. Inc.*, 88
2 F.3d 780, 783 (9th Cir. 1996). “[C]onclusory allegations of law . . . are insufficient to defeat a
3 motion to dismiss.” *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996).

4 Plaintiff’s Second Amended Complaint is completely devoid of factual allegations as to
5 Defendant Alliant. Throughout this action, the Court has directed Plaintiff to provide sufficient
6 facts from which the intended defendants can understand they are being sued so that they may
7 file a responsible pleading. Plaintiff has also been admonished that his failure to amend his
8 pleading in accordance with the rules and the Court’s prior orders may result in dismissal. *See*
9 *e.g.*, Dkt. 33, pp. 2-3.

10 Accordingly, it is **ORDERED**:

11 (1) Plaintiff’s requests for alternate service (Dkts. 46 and 47) are **DENIED**;

12 (2) Defendants Lyft Inc. and Alliant Insurance Services, Inc. are **DISMISSED** from
13 this action **without prejudice**.

14 (3) No further amendments to Plaintiff’s complaint will be allowed.

15 (4) The parties shall confer and submit an amended Joint Status Report to the Court
16 by **May 31, 2024**.

17 DATED this 15th day of May, 2024.

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20 BRIAN A. TSUCHIDA
21 United States Magistrate Judge
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